

ASSEMBLY BILL

No. 1013

Introduced by Assembly Member Campbell

February 20, 2003

An act to amend Section 1312 of the Corporations Code, relating to corporations.

LEGISLATIVE COUNSEL'S DIGEST

AB 1013, as introduced, Campbell. Corporations: dissenters' rights.

Existing law provides that a shareholder of a corporation who has a right to demand payment of cash for the shares held by the shareholder does not have the right to attack the validity of any reorganization or short-form merger of the corporation in court, except as specifically provided.

This bill would extend this same prohibition to a shareholder who holds shares that are either listed on any national securities exchange certified by the Commissioner of Corporations or on the National Market System of the NASDAQ Stock Market.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1312 of the Corporations Code is
2 amended to read:
3 1312. (a) No shareholder of a corporation who has a right
4 under this chapter to demand payment of cash for the shares held
5 by the shareholder *or who holds shares that are either (1) listed on*

1 *any national securities exchange certified by the Commissioner of*
2 *Corporations under subdivision (o) of Section 25100 or (2) listed*
3 *on the National Market System of the NASDAQ Stock Market, shall*
4 *have any right at law or in equity to attack the validity of the*
5 *reorganization or short-form merger, or to have the reorganization*
6 *or short-form merger set aside or rescinded, except in an action to*
7 *test whether the number of shares required to authorize or approve*
8 *the reorganization have been legally voted in favor thereof; but any*
9 *holder of shares of a class whose terms and provisions specifically*
10 *set forth the amount to be paid in respect to them in the event of*
11 *a reorganization or short-form merger is entitled to payment in*
12 *accordance with those terms and provisions or, if the principal*
13 *terms of the reorganization are approved pursuant to subdivision*
14 *(b) of Section 1202, is entitled to payment in accordance with the*
15 *terms and provisions of the approved reorganization.*

16 (b) If one of the parties to a reorganization or short-form
17 merger is directly or indirectly controlled by, or under common
18 control with, another party to the reorganization or short-form
19 merger, subdivision (a) shall not apply to any shareholder of such
20 party who has not demanded payment of cash for such
21 shareholder's shares pursuant to this chapter; but if the shareholder
22 institutes any action to attack the validity of the reorganization or
23 short-form merger or to have the reorganization or short-form
24 merger set aside or rescinded, the shareholder shall not thereafter
25 have any right to demand payment of cash for the shareholder's
26 shares pursuant to this chapter. The court in any action attacking
27 the validity of the reorganization or short-form merger or to have
28 the reorganization or short-form merger set aside or rescinded
29 shall not restrain or enjoin the consummation of the transaction
30 except upon 10 days' prior notice to the corporation and upon a
31 determination by the court that clearly no other remedy will
32 adequately protect the complaining shareholder or the class of
33 shareholders of which such shareholder is a member.

34 (c) If one of the parties to a reorganization or short-form merger
35 is directly or indirectly controlled by, or under common control
36 with, another party to the reorganization or short-form merger, in
37 any action to attack the validity of the reorganization or short-form
38 merger or to have the reorganization or short-form merger set aside
39 or rescinded, (1) a party to a reorganization or short-form merger
40 which controls another party to the reorganization or short-form



1 merger shall have the burden of proving that the transaction is just
2 and reasonable as to the shareholders of the controlled party, and
3 (2) a person who controls two or more parties to a reorganization
4 shall have the burden of proving that the transaction is just and
5 reasonable as to the shareholders of any party so controlled.

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